

Is Your Employee Fit For Duty?

The Use of Fitness for Duty Evaluations to Determine an Employee's Ability to Perform Their Job

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Introduction

- When is it appropriate to require a fitness for duty examination and what are some of the relevant legal considerations in deciding whether to order an examination – Oyvind
- Once you decide to order a fitness for duty examination, what other considerations and requirements are there to consider prior to the examination – Bob
- Guidelines and processes for conducting a fitness for duty examination and the determination of whether an employee is fit for duty – Scott
- Questions

Legal Considerations for Fitness for Duty



Americans with Disabilities Act

- Title I of the Americans with Disabilities Act of 1990 (the "ADA") limits an employer's ability to make disability-related inquiries or require medical examinations at three stages: pre-offer, post-offer, and during employment.
 - A fitness for duty examination ordered by an employer is considered a medical examination under the ADA.
- Pre-offer stage: The ADA prohibits all disability-related inquiries and medical examinations, *even if* they are related to the job.
 - Ok to ask if the employee can perform the essential functions of the job with or without an accommodation.

Polling Question

Is it appropriate for an employer to ask a candidate for employment, “What physical or mental limitations do you have that would affect your ability to do this job?”

1. Yes
2. No

Americans with Disabilities Act

Post-offer stage:

- After an applicant is given a conditional job offer, but before s/he starts work, an employer may make disability-related inquiries and conduct medical examinations, regardless of whether they are related to the job, as long as it does so for all entering employees in the same job category.
- The examination is applied uniformly to all entering employees in the same job category.
- The employer can only base its decision on information directly related to job fitness.

Americans with Disabilities Act

During employment stage:

- After employment begins, an employer may make disability-related inquiries and require medical examinations *only* if they are job-related and consistent with business necessity.
- This standard will generally be met if the employer has a reasonable belief that:
 - the employee's condition may prevent the employee from performing the job's essential functions, or
 - the employee poses a direct threat to his or her own safety or the safety of others.

When to consider a FFD examination

- An individual has applied for or occupies a position that has specific physical requirements or medical standards.
- Employee does not appear physically capable of performing the functions of his/her job.
- There is an observable change in an employee's behavior or capacities that potentially presents a direct threat of harm to self or others.
- Employee seeks to return from work following a medical leave of absence or W.C. injury.

Psychological fitness for duty examination

- A psychological fitness for duty is a specialized examination of an incumbent employee that typically results from: (1) objective evidence that the employee may be unable to safely or effectively perform a defined job; and (2) a reasonable basis for believing that the cause may be attributable to a psychological condition or impairment.
- Consider whether to address the concern through performance counselling and/or discipline versus ordering a fitness for duty examination.

FMLA Considerations

- Before returning an employee from FMLA leave, an employer may require fitness-for-duty certification only with regard to the particular health condition that caused the employee's need for FMLA leave. 29 CFR § 825.312.
- The certification from the employee's health care provider must certify that the employee is able to return to work.
- Employer can not require a separate fitness for duty examination before returning the employee to work.
- What about fitness for duty examination of employee immediately following return from FMLA leave?

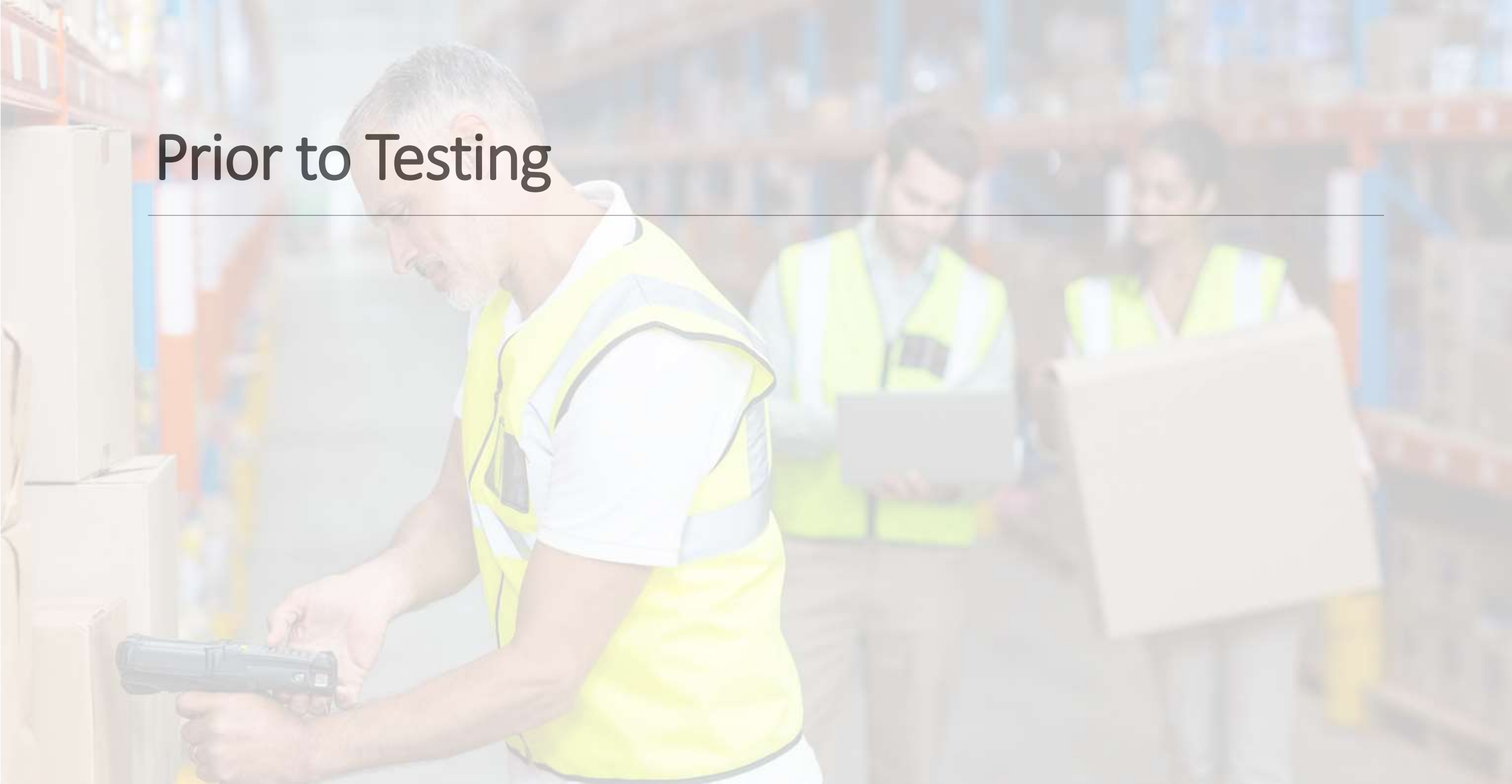
Potential Outcomes

- Fitness for duty evaluation can result in a variety of outcomes:
 - Safe return to work, either with or without a reasonable accommodation.
 - Referral to a specialist for further evaluation.
 - Referral to Employee Assistance Program (EAP).
 - Termination.
- Employer does not have a right to immediately order a second fitness for duty examination.
- Cost considerations.

Confidentiality

- Keep the results of the FFD examination confidential.
- The ADA requires employers to treat any medical information obtained from a disability-related inquiry or medical examination (including medical information from voluntary health or wellness programs), as well as any medical information voluntarily disclosed by an employee, as a confidential medical record.
- Employers may share such information only in limited circumstances with supervisors, managers, first aid and safety personnel, and government officials investigating compliance with the ADA.

Prior to Testing



Define the Job

Job Descriptions

- List of job responsibilities and functions
- Can be very general
- Used for hiring purposes
- Expectations for physical requirements vague
- Often don't address physical demands



Physical Job Demands

- Clearly defines the expectations for requirements to perform unrestricted duty
- Can define policy for employee safe work practices
- Provides a guideline for tasks available if transitional or modified duty is required.
- Objectively measures the physical requirements to perform the essential functions of the job

Polling Question

Expectations for RTW should always include not only the Essential Functions of a job, but Marginal Duties as well.

1. Yes
2. No

Essential Functions

- Activities that are crucial to perform the job
- Marginal activities vs essential functions
- Outlines clear expectations for the employee
- Established by the employer
- May need consultant to measure



Not so good...

Firefighters - Physical Demands

Firefighters frequently:

- Use their hands to handle, control, or feel objects, tools, or controls.
- Stand for long periods of time.
- Bend or twist their body.
- Repeat the same movements.

It is important for firefighters to be able to:

- Use muscles to lift, push, pull, or carry heavy objects.
- Move two or more limbs together (for example, two arms, two legs, or one leg and one arm) while remaining in place.
- Hold the arm and hand in one position or hold the hand steady while moving the arm.
- Use one or two hands to grasp, move, or assemble objects.
- Choose quickly and correctly among various movements when responding to different signals.
- React quickly using hands, fingers, or feet.
- Make quick, precise adjustments to machine controls.
- Be physically active for long periods without getting tired or out of breath.
- See details of objects that are less than a few feet away.
- Use stomach and lower back muscles to support the body for long periods without getting tired.
- Understand the speech of another person.
- See details of objects that are more than a few feet away.
- Determine the distance between objects.
- Speak clearly so listeners can understand.
- Adjust body movements or equipment controls to keep pace with speed changes of moving objects.
- Use fingers to grasp, move, or assemble very small objects.
- Bend, stretch, twist, or reach out.
- Use muscles for extended periods without getting tired.
- Focus on one source of sound and ignore others.
- Keep or regain the body's balance or stay upright when in an unstable position.
- See differences between colors, shades, and brightness.
- Hear sounds and recognize the difference between them.
- Coordinate movement of several parts of the body, such as arms and legs, while the body is moving.
- Move arms and legs quickly.

It is not as important, but still necessary, for firefighters to be able to:

- See objects in very bright or glaring light.
- While looking forward, see objects or movements that are off to the side.
- See objects in very low light.
- Make fast, repeated movements of fingers, hands, and wrists.
- Use muscles to jump, sprint, or throw objects.
- Determine from which direction a sound came.

Better...

SKILLS AND EXPERIENCE...

In order to be successful in this role, you must have a combination of skills and experience to understand the business.

Required:

- Positive attitude, team player, and care for safety of you
- Ability to work on your feet for 10 to 12 hour shifts
- Ability to work weekends, holidays, and mandatory OT as
- Able to lift up to 70 lbs by yourself
- Comfortable learning and operating Powered Industrial Trucks (PIT)
- Comfortable using technology frequently, such as computers and smart phones

VII. PHYSICAL DEMANDS

Maintains an appropriate level of personal fitness to pass the SMFR annual physical testing requirements.

While performing the duties of this job, the employee is regularly required to perform climbing, balancing, stooping, kneeling, crouching, crawling, reaching, standing, walking, pushing, pulling, lifting, grasping, feeling, talking, hearing, seeing and repetitive motions. Must possess basic swimming skills and be water safe due to potential for assignment to ice, water, and/or swift water rescue incidents.

Very Heavy Work: Exerting up to 150 pounds of force occasionally, and/or up to 50 pounds of force frequently, and/or up to 20 pounds of force constantly to move objects.

Specific vision abilities required by this job include close and distance vision acuity and the ability to adjust his or her focus, allowing a broad field of vision.

Visual and fine/gross motor skills enabling the safe operation of a vehicle during normal, as well as during hazardous weather situations.

Developing a FFD Test

- Identify jobs to be tested
- Identify the physical job demands
- Establish testing policy and procedure
- Clearly defined pass/fail parameters
- Test current employees
- Analyze results



Administering a FFD Test



Fit for Duty

What is it:

Fit for Duty (FFD) assessments test employees to make sure they are capable of performing the essential functions related to their job after injury or disability.

How it is performed:

An FFD assessment is designed to measure essential job-related tasks in regards to balance, fatigue, physical strength, range of motion, fine and gross motor skills, and ability to tolerate sitting, standing, and walking. It measures safe tolerances for lifting, carrying, pushing and pulling and positional tolerance such as squatting, kneeling, and reaching in order to determine if your employee is ready to go back to work.

Polling Question

If a testing protocol has not been created for a position the evaluator can substitute a test from another position within the company. For example, use a Rough Carpenter's test for a Finish Carpenter.

1. True
2. False
3. Depends

Fit for Duty

Process:

- Schedule employee within 24-48 hours or per employer request
- Sign consent for testing
- Review history of current injury
- Musculoskeletal screening done for injured body part
- Conduct test
- Give recommendation
- Send results within 4 hours of completion of test

EMPLOYMENT TESTING REPORT SUMMARY

Date of Report:	
Name: John Smith	Company: Boxes R'Us
Provider Name: Scott Law, PT, DPT	Job: Stocker/Receiver

Check	Type of Test:
	New-Hire/ Post-Offer Test
	Fit-For-Duty – Existing Employee - Return to Work after Injury/ Illness
	Fit-For-Duty – Existing Employee/ Non-Injured

Blood Pressure: _____ **Resting Heart Rate:** _____ **Max Heart Rate (220-age x85%)** _____

Termination criteria includes working HR exceeding max HR on more than 2 tasks and/or signs of cardiorespiratory distress

Essential Function Testing				
Job Task:	Essential Function Tasks:	Met	Not Met	HR
Positioning	<ol style="list-style-type: none"> 1. The Candidate will forward bend, squat, and then kneel on the floor. 2. Candidate will then return to the standing position. 3. Candidate will perform 10 repetitions. 			
Step On/Off Mechanical Floor Jack	<ol style="list-style-type: none"> 1. The Candidate will step up to and down from a 10" step. 2. Candidate will perform 20 repetitions (10 repetitions with each leg). 			
Move Pallet to Begin Loading Process	<ol style="list-style-type: none"> 1. Candidate will lift a 55lb pallet from the floor on to its side. 2. Candidate will drag the pallet for 20ft., and lay the pallet back on to the floor. 3. The Candidate will perform 5 repetitions of the task. 			

<p>Loading Pallet With Merchandise</p>	<ol style="list-style-type: none"> 1. Boxes/crates are loaded with 30lbs, 40lbs, 50lbs and 60lbs. 2. Candidate will lift and stack the boxes from 6" height to 72" shelf. 3. The Candidate will perform the task for 3 minutes continuously. 			
<p>Opening/Closing Trailer Door</p>	<ol style="list-style-type: none"> 1. Using a cable weight stack or a force gauge, the Candidate will perform a vertical upward pull to produce 80lbs of horizontal force at 6" height. 2. Candidate will then pull downward with a vertical force of 80lbs from 72" height. 3. Candidate will perform 3 repetitions for each. 			

Comments:

Check	Employment Test Recommendation:
	The (new-hire candidate or existing employee) <u>met</u> all test parameters indicating he/she <u>should be able</u> to safely perform all essential functions.
	<p>The (new-hire candidate or existing employee) <u>did not meet</u> some or all test parameters indicating he/she <u>may not</u> be able to safely perform some or all of the job's essential functions.</p> <p><i>In the case of an existing employee, employer should consider serial testing as part of a transitional return to work program.</i></p>
	<p>The (new-hire candidate) displayed a physical limitation or condition that <u>may</u> place him/her or others at risk of injury or worsen the condition should he/she begin work in this job.</p> <p><i>A physician qualified in the assessment or treatment of the limitation or condition identified <u>should</u> decide on final disposition. The Provider will send a copy of the test results to a physician of the Candidate's or Company's choice so that physician can determine disposition.</i></p>
	The (new-hire candidate or existing employee) <u>was not able to complete</u> essential function testing and will need <u>medical clearance</u> before returning to complete testing.
	The (new-hire candidate or existing employee) <u>was not able to complete</u> essential function testing, due to a false-negative drug screen. <u>Further lab testing is required</u> before returning to complete testing.
Candidate	
Name	
Company	
Job Title	
Provider:	
Print Name	
Signature	
Provider Phone	

Monitoring Performance

Mechanical Changes:

- Mechanical changes are allowed as long as the task can still be completed safely.
- If the changes are significant and could potentially cause the employee to get injured the task will be stopped.
- Heart rate and blood pressure can only be collected if it is the company's policy to do so for the FFD, otherwise the employee would have to consent to having these measured.

FFD vs FCE:

- No validity or reliability criteria are collected, nor is there a determination of good vs poor effort with an FFD.

Test Outcome

Capable vs Not Capable:

- Fit for Duty assessments test employees to ensure they are capable of performing the essential functions related to their job after injury or disability.
- If they are not capable for a task(s) they will be tested to their safe maximum.
- Employer could use safe maximums to place person in a different position if appropriate.

Questions/Discussion



Thank You!



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